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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,336	03/26/2004	Cecilia DeVenezia	DV-04	9525
47728	7590	07/07/2006	EXAMINER	
THOMAS J. GERMINARIO, ESQ. 154 ROUTE 206 CHESTER, NJ 07930			HAWK, NOAH CHANDLER	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/809,336	DEVENEZIA ET AL.	
	Examiner	Art Unit	
	Noah C. Hawk	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is unclear because although a forward and a reverse direction are recited, no specific direction or orientation is given. Because the choice of direction is largely dependent on the type of auger bit used by the device, clockwise or counterclockwise, it is unclear what rotary direction the applicant intends the motor to turn in either direction. The phrase "in which alternate augers the width and pitch of the helical flighting are determined by the type of terrain in which the beach umbrella will be used" in Claim 6 renders the claim indefinite. It is unclear whether the applicant is claiming alternate auger types or merely suggesting the existence of other types and the adaptability of the motor shaft to receive such. If the intention is to claim other augers with alternate flighting pattern, they must be clearly recited.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

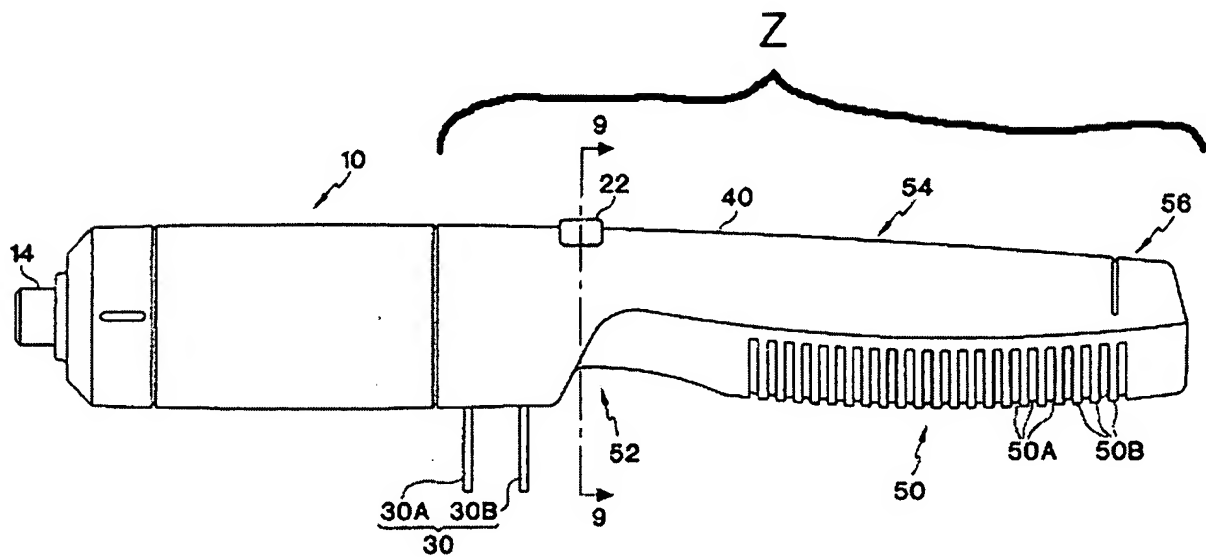
4. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in US Patent 5152495 in view of Doreste in US Patent 6267127 and Chan et al. in US Patent 5525889. Jacinto teaches a self anchoring beach umbrella having a canopy member having an upper tubular element (A) with a spreadable canopy (C) and a lower tubular element (B); a pole member (20) having an upper element (D) and a motor element (137) comprising a DC electric motor (137, the fact that the motor receives power from the battery 90 is sufficient to consider it a DC motor) having on its lower end an axially-disposed shaft (35) through which a rotary torque is generated when the motor is activated and an auger (40) having a cylindrical axis (45) and helical flighting coupled to the shaft of the electric motor; a battery chamber (E) located in or mounted upon the pole member, said battery chamber having within it one or more batteries (90) and having a means (F) for accessing said batteries so that they may be removed and replaced or recharged; a switch (100) mounted on the motor element of the pole member and electrically connected to the batteries, whereby the motor may be activated and the direction and speed of the motor may be controlled. Jacinto et al. do not teach an axial lumen in the lower tubular element, an upper element for insertion therein, that the motor is reversible or that the device has a handle on the motor with a pressure sensitive, directional switch. Doreste teaches a beach umbrella device with a canopy member (12) having a lower tubular element (20) within which is formed an axial lumen (26) as well as a pole member (50) having an upper element (52) formed for insertion into the axial lumen of the canopy member. It would have been obvious to one

of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. by using an axial lumen in the lower tubular element to receive an upper element formed for insertion therein as taught by Doreste in order to allow the canopy member to be more easily separated from the pole member. Jacinto et al., as modified does not teach a reversible electric motor or a handle with a pressure sensitive, directional switch.

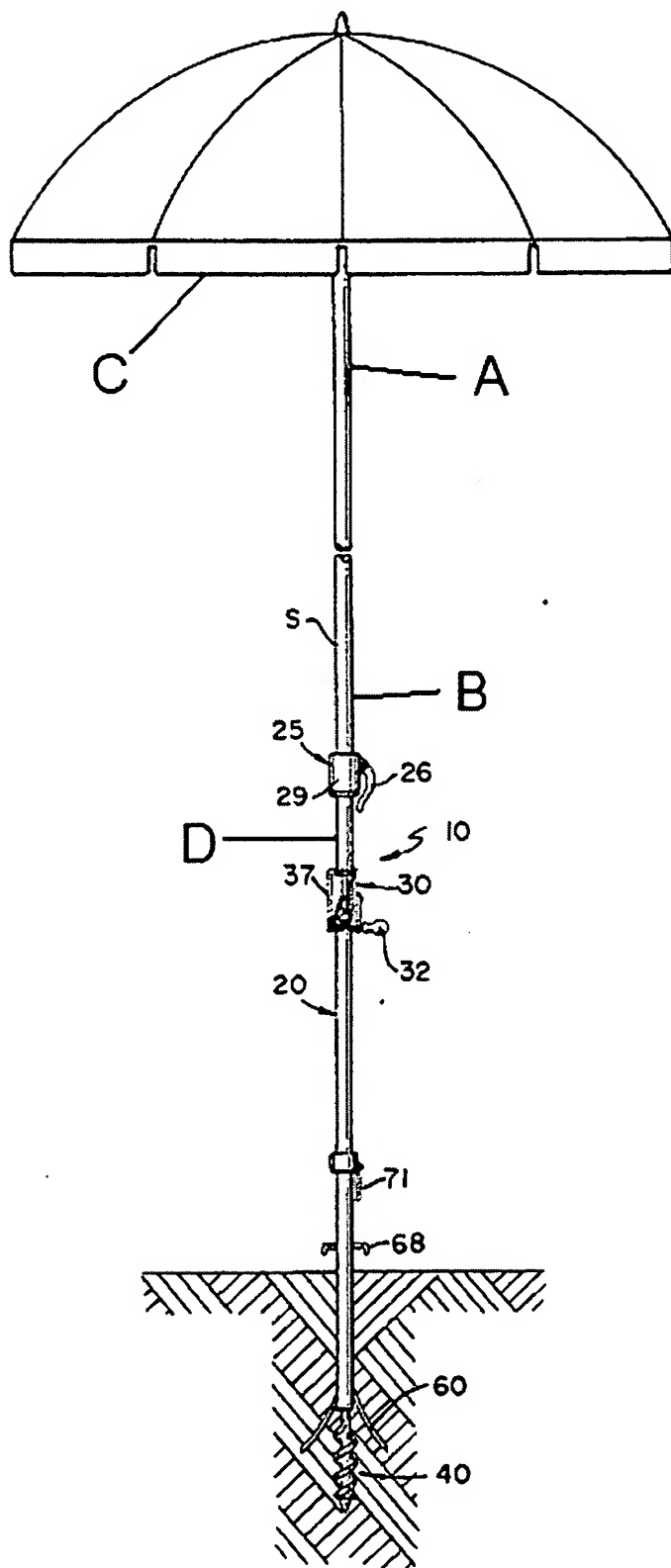
Chan et al. teaches a rotating power tool having a variable speed DC electric motor (12) with a double pole-double throw switch (22, see Chan, Column 2, lines 49-57: a "DPDT switch" is considered in this case to be a double-pole-double-throw switch) which regulates the direction of the motor by the direction of the pressure applied to the switch with a rheostat element to regulate the speed of the motor (a "speed control circuit" is considered in this case to be functionally equivalent to a rheostat.). Chan further teaches that the tool has a handle (section Z of the tool, best seen below) attached to the motor element, that the switch is mounted on the handle and that the switch is a positive action switch. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the umbrella of Jacinto et al., as modified, by using a motor with a handle having a pressure and direction sensitive switch mounted on its handle as taught by Chan et al. in order to allow the user to control the rotation of the auger more precisely. Please note: although Jacinto and Chan are silent on which direction the motor rotates, it would be obvious that when the motor is engaged to turn in the "forward" direction, the auger would be driven in such a way as to insert itself into the ground, whether it was a clockwise-wound helix or a counterclockwise-wound helix.

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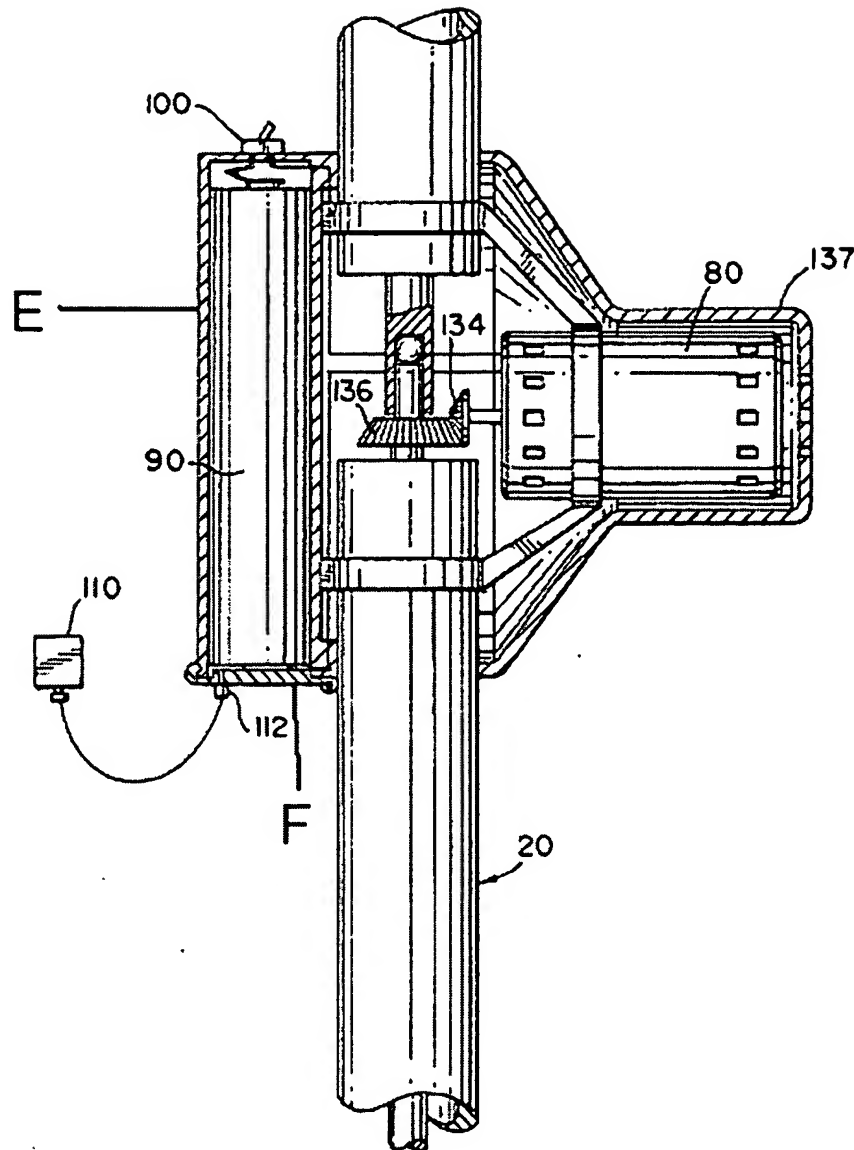
Likewise, it would be obvious that when the motor is engaged to turn in the “reverse” direction, the auger would be driven in such a way as to extricate itself from the ground.



Chan et al., Figure 2



Jacinto et al. Figure 1

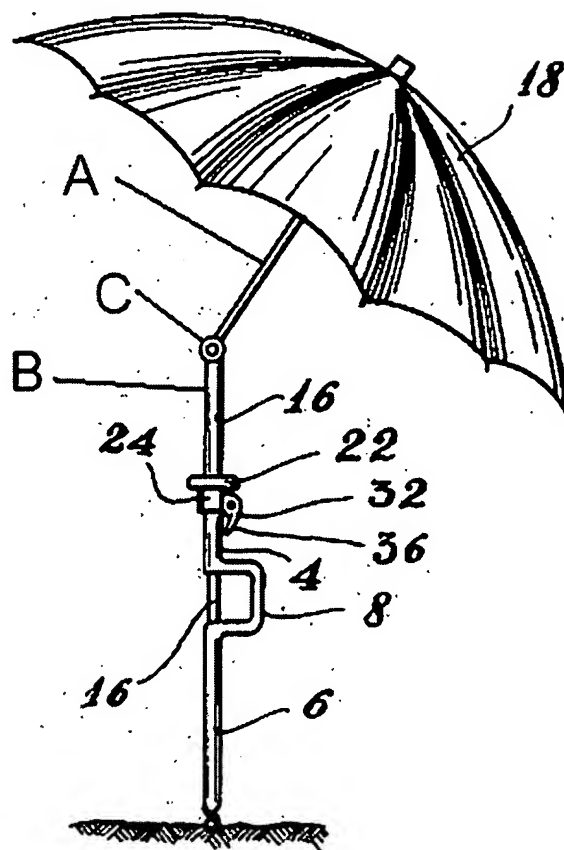


Jacinto et al. Figure 3

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al., as modified, in view of Adams et al. in US Patent 3961671. Jacinto et al., as modified, fails to teach that the auger is detachably coupled to the motor. Adams et al.

teaches an auger (3) which is detachably coupled (see Adams et al., Column 3, lines 57-63) to the shaft (61) of the motor. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. as modified by using a detachably coupled auger as taught by Adams et al. in order to allow the user to attach different size and shape augers to the device.

6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al., as modified, and further in view of Campomar in US Patent 2628797. As stated above, Jacinto et al., as modified fails to teach a tilting umbrella. Campomar teaches an auger-anchored umbrella with a joint means (C) disposed between the upper (A) and lower (B) tubular elements for tilting the upper tubular element of the canopy about an axis with respect to the lower tubular element. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al., as modified, by using a tilting umbrella as taught by Campomar in order to change the position of the umbrella without changing the anchor position.



Campomar, Figure 3

Response to Arguments

7. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.
8. Regarding applicant's inclusion of further details of the switch type on the motor, the newly cited prior art describes such switches. Further, reversible, double pole-double throw, pressure sensitive switches are commonplace in power tools with reversible motors. Also, the use of interchangeable bits (or augers in this case) is a common practice.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Michiasaw, Chou, Dine, Dewar et al., Wilson, Reinhardt, Stien, Kandle, Swain, Watson, Lines, and Wilson '707 disclose augers with different types and directions of flightings. Holzner, Jr., Fuhreck et al., Markle et al. and Nett disclose motorized devices with pressure sensitive, bi-directional switches coupled to reversible motors.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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